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the owner of the timber no longer has any legal right to go upon the other's land, but that he may enter and remove the timber, subject to the payment of damages for the trespass only.[11] Though such trespasses might have to be frequent, a court of equity, in the absence of any other injury to the premises, would probably not enjoin the owner of the timber from taking possession of his own property.[12] Under certain circumstances, it might even restrain the landowner from resisting such entry. As another way out of the difficulty, where the vendee is held to have acquired an interest in the land, equity might entertain a partition suit by either party.[13]

THE SITUS OF CHOSES IN ACTION.—A chose in action, being an incorporeal, intangible thing, can have no actual, physical *situs*.[1] As a matter of practice, however, in determining the rights of parties laying claim to a chose in action, it is frequently necessary to assign it some legal *situs*. Accordingly it is often said that its *situs* is generally at the domicil or with the person of the creditor.[2] On the other hand, for certain purposes, such as taxation,[3] administration of estates,[4] and trustee process,[5] the *situs* is commonly fixed at the domicil or with the person of the debtor. This departure from what is considered the general rule is usually accounted for on the theory of a legislative or judicial fiat.[6] In the case of garnishment it has also been said that jurisdiction does not depend on the *situs* of the debt but upon control over the garnishee properly served.[7] It is submitted that a more satisfactory explanation, however, may be found which will cover all the so-called anomalous cases without resort to a legal fiction.

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[11]Goodson *v.* Stewart, *supra.*

[12]See Gates *v.* Johnston Lumber Co. (1899) 172 Mass. 495, 52 N. E. 736.

[13]See Butterfield Lumber Co. *v.* Guy, *supra.*

[1]See Chicago etc. Ry. *v.* Sturm (1898) 174 U. S. 710.

[2]See Lovejoy *v.* Albee (1851) 33 Me. 414, 417; Williams *v.* Ingersoll (1882) 89 N. Y. 508, 523; Lancashire Ins. Co. *v.* Corbetts (1897) 165 Ill. 592, 46 N. E. 631; Morgan *v.* Mutual etc. Ins. Co. (N. Y. 1907) 119 App. Div. 645, 104 N. Y. Supp. 185.

[3]See 16 Columbia Law Rev., 137.

[4]Saunders *v.* Weston (1882) 74 Me. 85; *cf.* Merrill *v.* New England etc. Ins. Co. (1869) 103 Mass. 245.

[5]See *infra,* notes 6, 7, 9.

[6]Bragg *v.* Gaynor (1893) 85 Wis. 468, 55 N. W. 919; Newland *v.* Reilly (1891) 85 Mich. 151, 48 N. W. 544; Williams *v.* Ingersoll, *supra.* Where the authority for fixing the *situs* with the debtor is regarded as purely statutory and in derogation of the common law rule, it naturally follows that the statutes governing must be strictly followed. Morawetz *v.* Sun Ins. Co. (1897) 96 Wis. 175, 71 N. W. 109. On the point made in the Morawetz Case that the corporation must have property in the state or be liable on a cause of action arising either in the state or in favor of a resident thereof, see *contra* Newland *v.* Reilly, *supra*; Miller *v.* Jones (N. Y. 1893) 67 Hun 281, 22 N. Y. Supp. 86. Where the garnishee and principal debtor reside in different states having different exemption laws the *lex fori* should apply. Morgan *v.* Neville (1873) 74 Pa. 52; *contra,* Mason *v.* Beebee (1890) 44 Fed. 556.

[7]See Mooney *v.* Buford etc. Co. (1896) 72 Fed. 32; Lancashire Ins. Co. *v.* Corbetts, *supra.*

If we may assume that a chose in action connotes a right to sue at law for a recovery against the obligor, then it may well be said that the *situs* of the chose in action will be wherever that right exists; and, since the obligor generally may be sued wherever he is found, it will follow that the *situs* is with his person. There should be no more difficulty with the conception of a man in one state owning a chose in action the *situs* of which is in another state than with the conception of his owning land or chattels similarly situated. Nor does the possession in one state of a promissory note, stock certificate, or other evidence of an obligation, the *situs* of which is in another state, present any greater inconsistency than the case of a deed or bill of sale in one state as evidence of title to property situated in another. In short, the logical rule would seem to be that a chose in action is property[8] whose *situs* is with the person of the debtor or obligor. Where the obligor is a corporation doing business in several states and having in such states duly accredited agents upon whom process may be served, it is well settled that suit may be brought against it in any state where it is so represented.[9]

These principles were applied in the recent case of *Perry* v. *Young* (Tenn. 1916) 118 S. W. 577. The complainant had caused to be issued to him by an insurance company incorporated under the laws of New Jersey a policy of insurance on his life, payable to himself, and had assigned this policy to his mother. After the death of the mother, the insured brought a bill to reform the contract of assignment to conform to the alleged agreement that the policy should revert to him in case his mother first died. Certain non-resident distributees of the mother were served by publication. It was admitted that the court had full statutory power to render a decree *in rem* affecting property properly brought within its control and that service by publication in such a proceeding would be valid,[10] so that the real question was whether the claim under the policy, the chose in action against the insurance company, was property within the jurisdiction of the court. The court held that it was and that, having jurisdiction over this *res* by virtue of service on the company through its Tennessee agent, it

[8]Bragg *v* .Gaynor, *supra*; see Morgan *v.* Mutual etc. Ins. Co., *supra*; *cf.* Ryan *v.* Seaboard R. R. (1897) 83 Fed. 889.

[9]Mohr etc. Co. *v.* Ins. Co. (1882) 12 Fed. 474; Hannibal & St. Joseph R. R. *v.* Crane (1882) 102 Ill. 249; Mooney *v.* Buford etc. Co., *supra*. And it has been held that an agreement to waive the right to sue the corporation wherever found is void. Reichard *v.* Manhattan Life Ins. Co. (1862) 31 Mo. 518. Where actions are brought in different states on the same claim, the general rule is that the judgment first paid will bar the enforcement of other judgments in other states. See Lancashire Ins. Co. *v.* Corbetts, *supra*; but see Bryan *v.* University Publishing Co. (1889) 112 N. Y. 382, 19 N. E. 825; Douglass *v.* Phenix Life Ins. Co. (1893) 138 N. Y. 209, 33 N. E. 938; *cf.* Morgan *v.* Mutual etc. Ins. Co., *supra*.

[10]Although it is well recognized that a personal judgment against a non-resident served by publication or other substituted process is invalid, Pennoyer *v.* Neff (1877) 95 U. S. 714; McEwan *v.* Zimmer (1878) 38 Mich. 765; Shepard *v.* Wright (N. Y. 1880) 59 How. Pr. 512, it is equally well settled that, where the court has within its jurisdiction property of a non-resident, it may, under any authorized form of substituted service upon such defendant, render a judgment *in rem* or *quasi in rem* affecting the status of such property or title thereto. Cooper *v.* Reynolds (1870) 77 U. S. 308; Lockwood *v.* Brantly (N. Y. 1883) 31 Hun 155; Sohege *v.* Singer Mfg. Co. (1907) 73 N. J. Eq. 567, 68 Atl. 64; see Pennoyer *v.* Neff, *supra*.

could settle the status and rights of the parties with respect to the policy. Not only is this decision correct under the principles above set forth,[11] but if the *situs* of a chose in action be deemed to be with the creditor it is difficult to see how any adjudication could ever be obtained upon a state of facts such as are presented in that case where the parties claiming are residents of different states.[12] The same inconvenience would also arise if there were but one person claiming adversely to the plaintiff and that person resided in a state where the insurance company had no duly accredited agent. The decision in the principal case, therefore, is a commendable one both logically and on the ground of expediency.

NATURE AND EXTENT OF THE RIGHT IN TRADE-MARKS.—"A trade-mark is an arbitrary, distinctive name symbol or device to indicate or authenticate the origin of the product to which it is attached."[1] For the acquisition of a right in such a mark, there must be, in addition to invention, such use in connection with a particular product as will identify the origin of that product among others of the same class.[2] Once the right is acquired, however, mere use of the distinctive symbol by another amounts to a misrepresentation that his goods are those of the owner of the trade-mark. This misrepresentation constitutes the ultimate offense in cases of trade-mark infringement[3] and is an actionable wrong regardless of intent.[4] This fact, that even innocent use will constitute an infringement, has resulted in the classification of the right in a technical trade-mark as a property right,

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[11]But see Jellenik *v.* Huron Copper Mining Co. (1897) 82 Fed. 778; Gleason *v.* Northwestern etc. Ins. Co. (1911) 203 N. Y. 507, 97 N. E. 35.

[12]See Morgan *v.* Mutual etc. Ins. Co., *supra*, p. 653.

[1]G. W. Cole Co. *v.* American Cement & Oil Co. (C. C. A. 7th 1904) 130 Fed. 703, 705; see Ball *v.* Broadway Bazaar (1909) 194 N. Y. 429, 434, 87 N. E. 674. This definition serves to distinguish a technical trade-mark from a trade name which does not of itself point to the origin of the goods but may do so by an acquired secondary meaning which will be protected on the doctrine of unfair competition. G. W. Cole Co. *v.* American Cement & Oil Co., *supra*; Waltham Watch Co. *v.* American Waltham Watch Co. (1899) 173 Mass. 85, 53 N. E. 141; Draper *v.* Skerrett (C. C. 1902) 116 Fed. 206.

[2]Tetlow *v.* Tappan (C. C. 1898) 85 Fed. 774; Derringer *v.* Plate (1865) 29 Cal. 293, 295; see G. & C. Merriam Co. *v.* Saalfield (C. C. A. 6th 1912) 198 Fed. 369, 372.

[3]McLean *v.* Fleming (1877) 96 U. S. 245, 255; Church & Dwight Co. *v.* Russ (C. C. 1900) 99 Fed. 276; see Canal Co. *v.* Clark (1871) 80 U. S. 311, 322. The injury to the right in a trade name is in its essence the same. Bissel Chilled Plow Works *v.* T. M. Bissel Plow Co. (C. C. 1902) 121 Fed. 357. In fact, both classes of cases are simply branches of the law of unfair competition, see G. & C. Merriam Co. *v.* Saalfield, *supra*, and the underlying principle is to afford protection to the good will of a business. See McLean *v.* Fleming, *supra*.

[4]Church & Dwight Co. *v.* Russ, *supra*; Coffeen *v.* Brunton (1849) 4 McLean 516; see Lawrence Mfg. Co. *v.* Tennessee Mfg. Co. (1891) 138 U. S. 537, 549, 11 Sup. Ct. 396. In the last case, it is indicated that rebuttal of the presumption of fraudulent intent would result in exemption from liability for damages, leaving the plaintiff to an injunction only. *Cf.* McLean *v.* Fleming, *supra*, p. 257.